

PROJECT NO. 50031

**RULEMAKING RELATED TO
GENERATION COST RECOVERY
RIDER (GCRR)**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF NEW §25.248
AS APPROVED AT THE FEBRUARY 14, 2020 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.248, relating to the establishment of a generation cost recovery rider (GCRR) that establishes rates for certain non-Electric Reliability Council of Texas (ERCOT) utilities. The proposed new rule will implement the changes required by House Bill 1397, passed in the 86th Regular Legislative Session, relating to a rider to recover an electric utility’s investment in a power generation facility. The provisions of the rule only apply to an electric utility that operates solely outside of ERCOT.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will create a new regulation;

(6) the proposed rule will not expand an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

The proposed rule creates a new section numbered 25.248. The new regulation is required in order to implement HB 1397 and sets forth the requirements for an electric utility that operates solely outside of ERCOT to apply for a rider to recover the electric utility's investment in a power generation facility.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mark Filarowicz, Senior Financial and Accounting Analyst, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Filarowicz has also determined that, for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be probable reductions to regulatory burdens and expenses associated with rate regulation proceedings and that there will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on April 16, 2020. The request for a public hearing must be received by March 30, 2020. Requests for a public hearing must be made separately from comments to the proposed rule.

Public Comments

Comments on the proposed new section may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326. Initial comments must be received by March 30, 2020. Reply comments must be received by April 14, 2020. Sixteen copies of comments to the proposed rule are required to be filed by 16 Texas Administrative Code §22.71(c). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 50031.

Statutory Authority

This new section is proposed under §14.002 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, PURA §36.213(g) Recovery of Generation Investment by Non-

ERCOT Utilities, which requires the commission to adopt rules as necessary to implement an application to allow electric utilities that operate solely outside of ERCOT to apply for a rider to recover the electric utility's investment in a power generation facility.

Cross reference to statutes: Public Utility Regulatory Act §§14.002 and 36.213.

§25.248. Generation Cost Recovery Rider.

- (a) **Applicability.** This section provides a mechanism for an electric utility to request to recover investment in a power generation facility through a generation cost recovery rider (GCRR) outside of a base-rate proceeding. This section applies only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless context indicates otherwise.
- (1) **GCRR billing determinant** -- Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the previous calendar year.
 - (2) **Generation invested capital** -- The parts of the electric utility's invested capital for a power generation facility that will be functionalized as generation plant properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 303 through 347, 352, and 353 when the generation facility is placed into service.
 - (3) **Power generation facility** -- A discrete facility or facilities constructed or purchased by an electric utility for use in generating electricity for public service by the electric utility, and the cost of which is not included in the electric utility's base rates. The term "facility" may encompass different parts of a single generation facility that begins providing service to the electric utility's customers on the same date.
 - (4) **Power generation facility invested capital** -- Generation invested capital associated with a power generation facility included in the electric utility's GCRR that will be placed into service before or at the time the GCRR becomes effective under subsection (g) of this section.
 - (5) **Power generation facility net invested capital** -- Power generation facility invested capital that is adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all power generation facilities included in the electric utility's GCRR.

- (6) **Weather-normalized** -- Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the GCRR billing determinants are derived.
- (c) **GCRR Requirements.** The GCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.
- (1) An electric utility must not have more than one GCRR.
 - (2) An electric utility with an existing GCRR may apply to update the GCRR to reflect the electric utility's actual capital investment in a power generation facility and additional power generation facilities.
 - (3) Any GCRR established under this section will take effect on the date the power generation facility begins providing service to the electric utility's customers. Any update to an existing GCRR for an additional power generation facility will take effect on the date that additional power generation facility begins providing service to the electric utility's customers.
 - (4) As part of the next base-rate proceeding for the electric utility, the electric utility must request to move all investment being recovered in a GCRR into base rates and the GCRR will be set to zero.
- (d) **Calculation of GCRR Rates.** The GCRR rate for each rate class must be calculated according to the provisions of this subsection and subsections (e) and (f) of this section.
- (1) The GCRR rates will not take into account changes in the number of the electric utility's customers and the effects that energy consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates.
 - (2) The GCRR rates must not include estimated costs.
 - (3) The GCRR rate for each rate class will be calculated using the following formula:

$$\text{GCRR}_{\text{CLASS}} = \text{RR}_{\text{CLASS}} / \text{BDC}_{\text{CLASS}}$$
 - (4) The values of the terms used in this subsection will be calculated as follows:
 - (A) $\text{RR}_{\text{CLASS}} = \text{RR}_{\text{TOT}} * \text{ALLOCC}_{\text{CLASS}}$
 - (B) $\text{RR}_{\text{TOT}} = \text{TRAF} * ((\text{PGFIC} * \text{ROR}_{\text{RC}}) + \text{PGFDEPR} + \text{PGFFIT} + \text{PGFOT})$
 - (C) $\text{ALLOCC}_{\text{CLASS}} =$
 $\text{ALLOCR}_{\text{C-CLASS}} * (\text{BDC}_{\text{CLASS}} / \text{BDR}_{\text{C-CLASS}}) / \sum (\text{ALLOCR}_{\text{C-CLASS}} * (\text{BDC}_{\text{CLASS}} / \text{BDR}_{\text{C-CLASS}}))$

- (5) The terms used in this subsection represent or are defined as follows:
- (A) **Descriptions of calculated values.**
- GRR_{CLASS}** -- GRR rate for a rate class.
- RR_{CLASS}** -- GRR class revenue requirement.
- RR_{TOT}** -- Total GRR revenue requirement.
- ALLOCC-CLASS** -- GRR class allocation factor for a rate class.
- (B) **GRR billing determinants and power generation facility values.**
- BDC-CLASS** -- GRR billing determinants that are weather-normalized.
- PGFIC** -- Power generation facility net invested capital.
- PGFDEPR** -- Power generation facility depreciation expense.
- PGFFIT** -- Federal income tax expense associated with the return on the power generation facility net invested capital, reduced by any tax credits related to the power generation facility that are not returned to customers as a credit or other offset to eligible fuel expense.
- PGFOT** -- Other tax expense associated with the power generation facility.
- (C) **Baseline values.** The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding, or if an input to the GRR calculation from the electric utility's last base-rate proceeding is not separately identified in that proceeding, it will be derived from information from that proceeding:
- TRAF** -- Texas retail jurisdiction production allocation factor value used to establish rates in the electric utility's last base-rate proceeding determined under the provisions of subsection (e) of this section.
- BDRC-CLASS** -- Rate class billing determinants used to establish generation base rates in the last base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any rate demand charges, and demand-based billing determinants will be used for those rate classes that include rate demand charges.
- ROR_{RC}** -- After-tax rate of return approved by the commission in the electric utility's last base-rate proceeding.

ALLOCR_{RC}-CLASS -- Rate class allocation factor value determined under the provisions of subsection (e) of this section.

- (e) **Jurisdictional and class allocation factors.** For calculating GCRR rates, the baseline jurisdictional and rate-class allocation factors used to allocate generation invested capital in the last base-rate proceeding will be used.
- (f) **Customer classification.** For the purposes of establishing GCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.
- (g) **GCRR application.** An electric utility may file an application for a GCRR before the utility places a power generation facility in service. The proceeding for a GCRR application must conform to the requirements of this subsection.
 - (1) **Scope of proceeding.** The issues of whether generation invested capital included in an application for a GCRR complies with PURA and is prudent, reasonable, and necessary will not be addressed in a GCRR proceeding.
 - (2) **Notice.** The applicant must notify all parties in the applicant's last base-rate proceeding that an application was filed. The notice must be provided by first-class mail and mailed the same day the application is filed. The notice must specify the docket number assigned to the application and a copy of the application must be included with the notice.
 - (3) **Parties and intervention.** Requests to intervene must be filed no later than 10 days after the date the application is filed. Objections to a request to intervene must be filed no later than 5 days after the request is filed. All requests to intervene must be ruled upon no later than 21 days after the application is filed.
 - (4) **GCRR forms.** If the commission adopts a form for GCRR applications, an electric utility must file its application using that form.
 - (5) **Sufficiency of application.** A motion to find the application materially deficient must be filed no later than 10 days after the application is filed. A motion to find an amended application deficient, when the amendment is in response to an order issued under this paragraph, must be filed no later than 5 working days after the amended application is filed. The motion must specify the nature of any alleged deficiency and, if the commission has adopted a form for a GCRR application, the

particular requirements of the form for which the application is alleged to be out of compliance. The applicant's response to such motion must be filed no later than five working days after the motion is filed. Within 5 days of the applicant's response, the presiding officer must issue an order finding the application sufficient or deficient, and if deficient must specify the deficiencies and the time within which the applicant must amend its application to cure the deficiencies. If the presiding officer has not issued a written order within 35 days of the filing of the application, or 25 days of the filing of an amended application, concluding that material deficiencies exist in the application, the application is sufficient.

- (6) **Action on application.** If the requirements of §22.35 of this title are met, the presiding officer must issue a notice of approval within 60 days of the date an application is found to be sufficient by order or rule. The presiding officer may extend this time if a party demonstrates that additional time is needed to review the application or the presiding officer needs additional time to prepare the notice of approval. Further, if the presiding officer determines that the application should be considered by the commission, the presiding officer must issue a proposed order for consideration by the commission at the next available open meeting.
- (h) **Update of generation invested capital.** Within 60 days after a power generation facility included in a GCRR begins providing service to the electric utility's customers, the electric utility may file an application to update the GCRR to reflect the electric utility's actual capital investment in the power generation facility. An application to update the GCRR under this subsection is subject to the requirements in subsection (g) of this section. Any update to the GCRR made under this subsection must include carrying costs on the amount of investment in excess of the investment initially approved for recovery under subsection (g) of this section. Carrying costs will accrue monthly from the date the power generation facility began providing service to the electric utility's customers through the date the adjustment is approved and must be calculated using the rate of return approved by the commission in the electric utility's most recent base-rate proceeding.
- (i) **Reconciliation.**
 - (1) Amounts recovered through a GCRR approved under this section are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed

after the effective date of the GCRR. The reconciliation will true up the total amount actually recovered through the GCRR approved under this section with the total revenue requirement that the approved GCRR was designed to recover. As part of the reconciliation, the commission will determine if the amounts recovered through the GCRR are reasonable and necessary.

- (2) Any amounts recovered through the GCRR that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. Carrying costs will be determined as follows:
 - (A) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the investments included in the GCRR.
 - (B) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.
- (j) **Threshold to initiate base-rate proceeding.** If a GCRR approved under this section includes cumulative incremental recovery for a power generation facility or power generation facilities where the amount of generation invested capital is greater than \$200 million on a Texas jurisdictional basis, the electric utility must initiate a base-rate proceeding at the commission not later than 18 months after the date the GCRR takes effect.

This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 14th DAY OF FEBRUARY 2020 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**